

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. CBA-2521-J

PETITION OF MONTGOMERY GENERAL HOSPITAL

OPINION OF THE BOARD

(Opinion Adopted December 9, 2009)

(Effective Date of Opinion: January 29, 2010)

Case No. CBA-2521-J is an application for modification of an existing special exception for a hospital. The modification is for construction of two, four-story Physician Office Buildings on the hospital's West Campus, with associated parking. In addition the Petitioner requests a waiver of the requirements of Section 59-E-3.7 of the Zoning Ordinance, and proposes to provide 499 parking spaces where 600 might otherwise be required. Finally, Petitioner seeks to clarify the record as to the land area covered by the hospital special exception, specifically requesting that the special exception approval expressly include all of the 46.46 acres under Petitioner's ownership and/or control as listed and shown on Exhibit No. 22(m), "Consolidation Plan," which includes the East Campus, the West Campus, and an adjacent area identified as "Miscellaneous Parcels."

The Hearing Examiner for Montgomery County held a public hearing on the application on July 17, 2009, closed the record in the case on October 29, 2009, and on November 25, 2009 issued a Report and Recommendation for approval of the modification.

Decision of the Board: Special Exception Modification **Granted**,
Subject to the Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on December 9, 2009. After careful consideration and review of the record in the case, the Board revised the proposed Conditions of approval as follows:

Condition 5, on a motion by David K. Perdue, Vice-chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd and Catherine G. Titus, Chair, in agreement, and Walter S. Booth necessarily absent, add the following sentence: The landscape

screening on the townhouse development side and the supporting berm must be installed before major construction activity on the office buildings commences.

Condition 7, on a motion by David K. Perdue, seconded by Carolyn J. Shawaker, with Stanley B. Boyd and Catherine G. Titus, Chair, in agreement, and Walter S. Booth necessarily absent, delete proposed Condition 7.

Condition 15, (Condition 14 as revised) on a motion by David K. Perdue, Vice-chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd and Catherine G. Titus, Chair, in agreement, and Walter S. Booth necessarily absent, add the following sentence: Any resulting changes to the site plan must be filed with the Board of Appeals.

Add a new Condition (17), on a motion by Catherine G. Titus, Chair, seconded by Carolyn J. Shawaker, with David K. Perdue, Vice-Chair and Stanley B. Boyd in agreement, and Walter S. Booth necessarily absent, add a new Condition as follows: The Petitioner shall establish a Community Liaison Council (CLC), whose membership should comprise the Peoples' Counsel for Montgomery County as an ex officio member, the Greater Olney Citizens' Association, representatives of the pertinent homeowners' associations and all abutting property owners. The CLC should meet at least twice a year, more often if the members deem it necessary. Minutes of the meetings should be kept and submitted to the Board for the special exception record.

Therefore, based upon the foregoing, on a motion by David K. Perdue, Vice-chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd and Catherine G. Titus, Chair, in agreement, and Walter S. Booth necessarily absent the Board adopts the Report and Recommendation and grants the requested modification, subject to the following Conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's report and in the Opinion of the Board.
2. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting this modification request.
3. All development within the Patuxent River Primary Management Area (PMA) must comply with Chapter VII –D -1(d) of the Environmental Guidelines before issuance of a sediment and erosion control permit and:
 - a. Enhanced SWM/BMPs must be applied to the entire site per the "non-conformance" criteria of the Environmental Guidelines in coordination with County DPS, and
 - b. All plans in CBA-2521-J must show the Patuxent River PMA delineation as shown on the PFCP
4. The final design of the building façade of the new POBs must substantially conform to the architectural renderings presented in Petitioner's submission to Technical Staff of April 24, 2009 (Exhibits 22(u), (v), (w), (cc), (dd) and (ee)), including materials, fenestration, and entrances.

5. The landscaping must comport with the revised Overall Planting (i.e., Landscape) Plan (Exhibit 81(a)). The landscape screening on the townhouse development side and the supporting berm must be installed before major construction activity on the office buildings commences.
6. Petitioner must provide pedestrian-scaled light fixtures in the landscaped courtyard area to provide adequate illumination and to create a safe pedestrian environment. All lighting must conform to the revised lighting plan, photometric study and light fixture plan (Exhibits 60(a), (b) and (c)).
7. Petitioner must limit expansion under this special exception modification to two physicians' office buildings of 60,000 square feet each, for a total of 120,000 square feet, plus 449 surface parking spaces on the West Campus and the new Transit Center on the East Campus.
8. Petitioner must provide 10 motorcycle and 20 bicycle parking spaces.
9. The new physician office buildings must not exceed 60 feet in height.
10. Petitioner's hours of operation of the Hospital are twenty-four (24) hours per day, seven (7) days a week. These hours are unchanged by the instant modification. Generally, the hours of operation of the POBs would be 8:00 A.M. until 5:00 P.M., which is typical for office buildings, but there may be occasional variations due to the association of the POBs with the Hospital. There will be no overnight stays of patients in the POBs (unless associated with some type of research or treatment program); however, there will be instances when doctors, staff or patients may arrive earlier or depart later than those hours, which represent the core period of activity for the POBs.
11. The rear (westernmost) row of pole light fixtures in the West Campus surface parking facility must have shut-off devices that extinguish the lights between 9:00 p.m. and 6:00 a.m., in order to minimize impacts on the adjacent townhouse communities.
12. On or before December 31, 2010, Petitioner must provide a long-range master plan for MGH, describing anticipated changes in physical and operations characteristics of the hospital over the long term, including but not limited to, existing and future buildings, access roads, pedestrian circulation and roadway connection options.
13. Petitioner must include a term in its lease or leases with any ground-lessee specifying, "Notwithstanding any other provision of this lease, Lessor and Lessee are bound by the terms and conditions of the special exception that governs the use of this property."
14. The special exception will require approval of a preliminary plan of subdivision to consolidate the unrecorded parcels into a new lot. As such, the adequacy of public facilities will be determined at subdivision, and approval of a preliminary plan of subdivision is a condition of the special exception modification. Any resulting changes to the site plan must be filed with the Board of Appeals.

15. All signs placed on the property must meet the requirements of Zoning Ordinance Chapter 59-F, unless a variance is granted by the Department of Permitting Services or the Sign Review Board. Sign permits must be obtained, and a copy of those permits and a signage plan showing the location and description of all new signs must be filed with the Board of Appeals prior to posting any new signs.
16. Approval of the consolidation of the MGH Campus into a single special exception site, 46.46 acres in size, as set forth in Exhibit 22(m), does not constitute approval of any physical or operational changes to the site not specifically authorized by this or later resolutions of the Board.
17. The Petitioner shall establish a Community Liaison Council (CLC), whose membership should comprise the Peoples' Counsel for Montgomery County as an ex officio member, the Greater Olney Citizens' Association, representatives of the pertinent homeowners' associations and all abutting property owners. The CLC should meet at least twice a year, more often if needed. Minutes of the meetings should be kept and submitted to the Board for the special exception record.
18. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of January, 2010.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.